

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:23-cv-00440-BO-RJ**

MXR IMAGING, INC.,

Plaintiff,

v.

EVOHEALTH LLC and STEVEN
DEATON, *individually and in his capacity
as Chief Executive Officer and Owner of
EvoHealth LLC,*

Defendants.

**DECLARATION OF
SHELBY LEMLER**

I, Shelby Lemler, am over the age of 18 and make this Declaration under 28 U.S.C. § 1746 on my own personal knowledge:

1. I have personal knowledge of the facts set forth in this Declaration and would testify under oath to their veracity if called upon to do so.
2. I am the Executive Vice President of Operations for Plaintiff MXR Imaging, Inc. (“MXR”).
3. I am familiar with MXR’s accounting records.
4. I am familiar with Defendants EvoHealth and Deaton, and the events described in the complaint in this lawsuit.
5. I am familiar with EvoHealth’s failure to provide software and services to MXR customer HonorBridge (a division of Carolina Donor), as described in paragraph 62 of the complaint.
6. EvoHealth sent a quote to MXR customer HonorBridge for a Fuse PACS Platform and related services, including an onsite “Edge” device, project management and applications, use of EvoHealth Cloud for five years, and software support from EvoHealth for five years. The quoted

price was \$24,500.

7. **Exhibit 1**, attached hereto, is a fair and accurate copy of this quote.

8. HonorBridge agreed to receive these services. MXR paid EvoHealth the full \$24,500 on HonorBridge's behalf before installation. However, EvoHealth never started (or completed) the installation and never provided any of the promised software or services to HonorBridge. EvoHealth never returned the \$24,500 MXR paid to EvoHealth on HonorBridge's behalf. MXR never received any payment from Carolina Donor or HonorBridge (or any other source) related to its payment to EvoHealth.

9. **Exhibit 2** has been intentionally omitted.

10. I am familiar with EvoHealth's participation as a paid sponsor at MXR's 2023 National Sales Meeting and its failure to pay for the sponsorship, as discussed in the complaint in this lawsuit. Specifically, EvoHealth was a "silver sponsor" at the meeting, which occurred in Las Vegas, Nevada.

11. **Exhibit 3**, attached hereto, is a fair and accurate copy of the invoice MXR sent to EvoHealth seeking payment for the \$13,000 in sponsorship fees. Neither EvoHealth nor Deaton ever paid MXR these sponsorship fees. Nor did MXR receive compensation for these unpaid fees from any other source.

12. I am familiar with EvoHealth's failure to pay MXR negotiated dealer compensation fees, as described in paragraph 61 of the complaint. EvoHealth agreed to pay MXR these fees for MXR referring its customers to EvoHealth, which led to EvoHealth signing contracts with these customers to provide PACS software and services and receiving substantial sums of money from these customers.

13. The below chart accurately summarizes the purchase orders reflecting the unpaid

dealer compensation fees, fair accurate copies of which are attached hereto as exhibits:

MXR Customer	Ex. No.	Invoice Date	Invoice No.	Dealer Compensation Fee
Boyotte Orthopedic & Sports Medicine	4	12/29/2021	8800848254	
Cape Fear Orthopedic Clinic PA	5	12/29/2021	8800848253	
Kidney Hypertension & Transplant Specialists	6	12/30/2021	8800848666	
Leighton Orthopaedics & Sports Medicine, P.C.	7	12/28/2021	8800847757	
Monticello Medical Clinic	8	1/11/2021	8800711697	
Morrilton Medical Clinic	9	1/11/2021	8800711696	
The Outpatient Diagnostic Center	10	12/7/2021	8800840997	
		12/7/2021	8800840996	
		12/17/2019	8800559230	
		12/23/2020	8800704953	
Quality Urgent Care of America	11	12/30/2021	8800848665	
The Surgery Center of Fairbanks	12	6/2/2022	8800908869	
TOTAL				\$ 137,111.20

14. Neither EvoHealth nor Deaton has ever paid MXR any of these owed dealer compensation fees. Nor has MXR received compensation for these unpaid dealer compensation fees from any other source.

15. I am familiar with MXR customer CNY Family Care, LLP and its interaction with EvoHealth described in paragraph 43 of the complaint. After EvoHealth's failure to provide working PACS software, systems, and support, CNY and MXR negotiated and executed a settlement [REDACTED].

16. **Exhibit 13**, attached hereto, is a fair and accurate copy of that settlement agreement.

17. But for EvoHealth's failure to provide working PACS software, systems, and support, and its misconduct, misrepresentations, and deceptive conduct related to the same, MXR would not have had to settle this dispute with CNY.

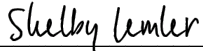
18. I am familiar with MXR customer First Choice Community Health Center, referenced in paragraph 24 of the complaint. Like many other MXR customers, EvoHealth agreed to provide working PACS software, systems, and support but failed to do so.

19. Following this failure, MXR paid another PACS provider called RadInfo \$15,000 to provide a supplemental system to First Choice after EvoHealth's failure.

20. But for EvoHealth's failure to provide working PACS software, systems, and support, and its misconduct, misrepresentations, and deceptive conduct related to the same, MXR would not have had to settle this dispute with CNY.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 29, 2024

DocuSigned by:

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Shelby Lemler